2024:PHHC:064066

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-13465 of 2019
Date of decision: 07.05.2024

Mohinder Pal

......Petitioner

Versus

State of Punjab and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Atul Nehra, Advocate,
for the petitioner.

Mr. Teevar Sharma, AAG, Punjab.

Mr. Aditya Pratap Duggal, Advocate,
for respondent No.3.

NAMIT KUMAR, J.

1. The petitioner has approached this Court by way of filing the instant writ petition seeking a writ of certiorari for quashing order dated 18.03.2019 (Annexure P-9), passed by respondent No.3, whereby his claim for grant of interest on the delayed retiral dues in view of the Division Bench judgment passed in CWP No.15423 of 2008 – Municipal Council, Pathankot v. Appellate Authority and others decided on 22.09.2008, has been rejected.

2. Brief facts of the case are that the petitioner was working as Junior Assistant with Nagar Council, Dera Baba Nanak, Gurdaspur. While he was in service, FIR No.53 dated 01.07.2011 under Sections 7/13 of the Prevention of Corruption Act, 1988 was registered against the petitioner in which cancellation report was subsequently submitted by the police agency before the learned

Additional Sessions Judge, Gurdaspur and the same was accepted by the Court concerned vide order dated 21.04.2018. He along with other persons filed CWP No.1251 of 2016 in which they sought benefits relating to provident fund as well as payment of arrears of gratuity along with interest and pension. The said writ petition was disposed of vide order dated 21.01.2016 with the following directions: -

> *"Accordingly, without commenting on the merits of the case, this writ petition is disposed of with a direction to respondent no. 2 to issue necessary directions to the concerned Municipal Councils to process the cases of the petitioners, whose details have been given in the Memo of Parties and the list (Annexure P-1) and pass necessary orders in respect of each of the persons separately after giving due notice to them. The said exercise be completed within a period of 4 months from the date of receipt of certified copy of the order. In case the said Municipal Councils find that the amounts are due as per the judgment of the Division Bench, the same be paid within a period of 2 months thereafter alongwith interest element as provided under the relevant provisions of the Payment of Gratuity Act, 1972."*

3. Thereafter, the petitioner was released the following payments:

Sr. No.	Particular	Amount
1.	Gratuity (Gratuity Act, 1972)	9,38,092/-
2.	Leave encashment	4,16,930/-
3.	P.F.	2,94,503/-
4.	Total	16,49,525/-

DETAIL OF PAYMENT MADE TO THE PETITIONER

Total amount payable	Amount paid	Cheque No.	Date
16,49,525/-	4,16,930/-	116479	15.01.2013
	2,00,000/-	126720	31.01.2013
	94,503/-	053556	25.01.2018

	2,00,000/-	023532	28.12.2018
	3,00,000/-	023534	28.12.2018
	4,38,092/-	023581	18.03.2019
16,49,525/-	16,49,525/-		

4. With regard to claim of the petitioner for grant of interest on the delayed retiral dues, speaking order dated 18.03.2019 was passed by the Executive Officer, Municipal Council, Dera Baba Nanak, wherein it has been stated that as per Rule 9.14 (c) of the Punjab Civil Services Rules, the employee is not entitled for gratuity until the conclusion of the departmental or judicial proceedings and since FIR against the petitioner was pending, therefore, he was not entitled for the gratuity amount, thereafter the said amount has also been released.

5. On issuance of notice of motion, separate replies have been filed by respondents No.1, 2 & 4 and respondent No.3. In the reply filed by respondent No.3, it has been stated as under: -

> *"9. That in response to paragraph no. 9 of the writ petition, it is submitted that S.Mohinder Pal, Junior Assistant retired on 31.12.2012 from Municipal Council, Dera Baba Nanak. It is further submitted that Sh. Mohinder Pal, Junior Assistant remained suspended from 01.07.2011 to 31.07.2011 and FIR No. 53 dated 01.07.2011 was registered under 7/13 of Prevention of Corruption Act, 1988 at Police Station Dera Baba Nanak. The cancellation report has been received in the office of Municipal Council Dera Baba Nanak on 06.08.2018. Thereafter the office of Municipal Council Dera Baba Nanak has made payment time to time to the petitioner. The total amount of Rs. 16,49,525/- including leave encashment, P.F, and gratuity under the Act was duly paid by the Municipal Council Dera Baba Nanak to the*

petitioner. The Municipal Council Dera Baba Nanak vide letter no. MCD-2013/226 dated 05.08.2013 has sanction his provisional pension which has been regularized vide letter no. 278 dated 13.12.2018 on receipt of the cancellation report of the court. But the petitioner has demanded payment of interest @ 10% from the date of retirement i.e. 31.12.2012 to the date of filling CWP No. 12561 of 2016, which is not applicable on the petitioner because FIR no. 53 dated 01.07.2011 was pending against the petitioner under section 7/13 of Prevention of Corruption Act, 1988 at P.S Dera Baba Nanak. Due to this reason retirement dues were not paid to him and provisional pension was sanctioned to the employee. As per Rule 9.14(C) of Punjab Civil Service Rule, petitioner is not entitled to get interest on the dues during the period of Department and Judicial proceeding and issue of final order. The petitioner claiming interest by way of filling the present writ petition when he had already received all dues from Municipal Council Dera Baba Nanak."

6. Learned counsel for the petitioner submits that on the mere pendency of FIR, the gratuity amount of Rs.9,38,092/- could not be withheld and finally the said FIR has been cancelled as the cancellation report has been accepted by the Court concerned on 21.04.2018. Therefore, the petitioner is entitled for the grant of interest on the delayed payment of gratuity amount. He placed relied upon the judgment dated 12.03.2024 in CWP No.19954 of 2018 – Gobind Ram Verma and others v. State of Punjab and others – and other connected cases, wherein similar question has been considered and the relevant portion from the said judgment is as under: -

"7. The question that arises for consideration and determination before this Court in the present cases is as to whether the action of the respondents in withholding the gratuity of the petitioners solely on account of pendency of FIR no.9 dated 29.06.2004 in which no challan / report under Section 173 Cr.P.C. had been filed on the date when the petitioners had retired, was justified or not.

8. A similar question arose before a Coordinate Bench of this Court and the Coordinate Bench of this Court vide judgment dated 09.02.2024 passed in CWP-28933-2022 titled as "Baljit Singh vs. State of Punjab and others" after taking into consideration the law laid down by the Hon'ble Supreme Court in Union of India vs. K.V. Jankiraman reported as 1991(3) SCT 317 had observed that the criminal proceedings would be deemed to have been initiated when challan is presented in the criminal proceedings and departmental proceedings are deemed to have been initiated after the charge memo is issued to the delinquent employee. It was also observed that the Coordinate Bench of this Court in CWP-3567-2006 titled as "Atam Bodh Sharma vs. State of Haryana and others" decided on 09.10.2006 had observed that mere pendency of an FIR without there being any challan presented in the said FIR on the date of the retirement of the employee, would not give any right to the department to withhold the pensionary benefits of the employee and the Court in Baljit Singh's case (supra) had after considering the entire matter, allowed the writ petition and directed the respondent authorities to pay interest @ 6% per annum to the petitioner therein from the date the gratuity became due till its payment. The relevant portion of the said judgment in Baljit Singh's case (supra) is reproduced hereinbelow:-

"7. The only question which arises for determination before this Court in the present writ petition is whether the action of the respondents in withholding the gratuity of the petitioner keeping in view the pendency of the FIR No.5 dated 12.07.2011 is justified or not?

8. For deciding the said issue, it is to be considered that on the date of the retirement of the petitioner i.e. 31.03.2012, whether any criminal proceedings were pending against the petitioner so as to give the right to the respondents to withhold the payment of gratuity of the petitioner.

9. It is an admitted case of the parties that FIR No.5 dated 12.07.2011, was registered against the petitioner, which was pending at the time of his retirement but no challan was presented prior to the retirement of the petitioner. Perusal of order dated 13.01.2021 passed by the learned Special Judge, Patiala, would show that cancellation report in the said FIR was filed originally on 11.09.2014, however, vide order dated 09.10.2014 the said cancellation report was declined and the case was sent back for further investigation. Subsequently, fresh cancellation report was submitted, which was again returned unaccepted vide order dated 09.03.2018 by the learned Special Judge, Patiala, with direction to conduct further probe. Again, the cancellation report was submitted wherein it was stated that contractor Sudhir Kumar had made payment for chlorine purchased by him from Una through cash and there was no bar to the making of said payment by cash and finally the third cancellation report was accepted by the learned Special Judge, Patiala, vide order dated

13.01.2021. That being so, on the date, when the petitioner retired after attaining the age of superannuation, only FIR No.5 dated 12.07.2011 was pending which was being investigated. The question that can mere pendency of an FIR on the date of retirement gives right to the respondents to withhold the retiral benefits on the ground that the criminal proceedings are pending, is required to be decided in the present writ petition.

10. Hon'ble Supreme Court in Union of India v. K.V. Jankiraman 1991(3) SCT 317 decided the question of law as to when a proceedings are deemed to be pending against an employee in respect of the departmental inquiry as well as in respect of the criminal proceedings so as to give right to the department to withhold the benefits. Hon'ble Supreme Court held that it is only when a charge-sheet is served upon a delinquent employee during the departmental proceedings, the departmental inquiry is stated to be pending against an employee, which will give right to the respondents to take an action against the employee in accordance with law. Similarly, where a Challan/charge-sheet has been presented against a person in the criminal proceedings, the criminal proceedings are to be treated as pending against the said person so as to give jurisdiction to the employer to take action against an employee. The relevant paragraph of the judgment in K.V. Jankiraman's case (supra) is as under:

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal

has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/ charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/chargesheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not *without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:*

> *"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;*
>
> *(2) ....*
>
> *(3) ....*
>
> *(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."*

11. In the present case, it is admitted by the learned counsel for respondent No.3 that only FIR No.5 dated 12.07.2011 was pending against the petitioner at the time of his retirement, which was under investigation and three cancellation reports were filed in the Court of learned Special Judge, Patiala, and finally third cancellation report was accepted on 30.01.2021. Therefore, it cannot be said that any criminal proceedings were pending against the petitioner on the date of his retirement so as to give right to the respondent/State to withhold the gratuity of the petitioner.

12. This Court while deciding CWP No.3567 of 2006 decided on 09.10.2006, titled as Atam Bodh Sharma v. State of Haryana and Others, held that mere pendency of an FIR without there being any Challan presented in the said FIR on the date of the retirement, there is no jurisdiction with the *department to withhold the pensionary benefits of an employee.*

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13. In the present case, only an FIR was pending against the petitioner and no challan had been presented against him upto the date of his retirement or even thereafter also, therefore, the claim of the petitioner will be squarely covered by the judgment in Atam Bodh Sharma's case (Supra). Learned counsel for the respondents has not been able to show any Rule or Regulation which gives the right to the respondent/State to withhold the retiral benefits merely upon the registration of an FIR. The right with the respondents is only to withhold the benefits in case of the pendency of the criminal proceedings and the criminal proceedings can only be deemed to be pending on the date when a Challan is presented against the accused. Hence, in the case of the petitioner withholding of his benefits by the respondents was beyond their jurisdiction.

14. Keeping in view the above, present petition is allowed. Respondent No.3 is directed to grant interest to the petitioner @ 6% per annum on his retiral benefits, from the date it became due till its actual payment was made. Likewise, interest @ 6% per annum be also granted to the petitioner from the due date of gratuity till its payment made on 03.11.2022. Said exercise be carried out within a period of three months from the date of receipt of certified copy of this order."

9. The abovesaid case squarely covers the case of the petitioners. No judgment to contrary has been cited. It would be relevant to note that Rule 9.14 (c) provides that no gratuity would be paid to the government employee *until the conclusion of departmental or judicial proceedings and issue of final order thereon and the term which has been used in the said clause is "judicial proceedings". As has been held in the abovesaid judgment and also in the judgment of the Hon'ble Supreme Court of India in Union of India vs. K.V. Jankiraman's case (supra), the "proceeding" would only be considered to be initiated / pending in case the challan has been filed in the criminal Court and the same having not been done on the date when the petitioners had retired in the present case, It cannot be said that there were any judicial proceedings pending so as to entitle the respondent authorities to withhold the gratuity of the petitioners. The Coordinate Bench of this court in the case of Lakhdev Singh vs. State of Punjab reported as 2001(3) RSJ 599 while considering a case in which Clause (c) of Rule 9.14 of the Rules was applicable, had held that in a case where an FIR had been registered but no challan had been filed, it could not be said that judicial proceedings were pending on the date of retirement so as to entitle the authorities to withhold the gratuity and the other retiral benefits. The relevant portion of the said judgment is reproduced hereinbelow:-*

> *"The argument is that the right would ensue to the Government to withhold the retiral benefits only if the departmental or judicial proceedings are pending on the retiree on the date of retirement. Admittedly, no proceedings were pending on the date of retirement of the petitioner. In support of his argument, the learned counsel relied upon the dicta of this Court expressed in L.R.Dhawan v.State of Haryana and others, 1996(3) Service Cases Today 11.*
>
> *4. So far as initiation of judicial proceedings is concerned, the same is entertained under clause (3)*

supra and presently period of four years having expired long back, no judicial proceedings could be initiated in pursuant to the said FIR against the petitioner for the purpose of withholding the retiral benefits. In support of his arguments, my attention was drawn to Walaiti Ram Gupta v. Punjab State, 1977(4) SCT 230 and K.C. Duggal, Sub Divisional Engineer v. The State of Punjab, 1989(2) RSJ 513.

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6. Learned counsel appearing for and on behalf of the State has not been able to rebut the argument of the learned counsel for the petitioner and has candidly admitted that in fact no judicial proceedings were pending at the time of retirement and even now the challan is yet to be put in Court.

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7. I am of the view that the respondents did not have any authority in withholding the amount due and payable as leave encashment, DCRG and the commutation of the pension because no judicial proceedings or departmental proceedings were pending against the petitioner at the time of retirement. In fact no judicial proceedings have been initiated for the last four years from the date of incident and in fact as per the said rule, before passing final orders, the Public Service Commission is required to be consulted. Admittedly, even the challan has not been put up in the court pursuant to the FIR till date."

10. The question which arose for consideration in the present case as detailed in para 7 of the present order is answered in favour of the petitioners and it is held that the respondent authorities had no right to withhold the gratuity due to the petitioners solely on account of the *pendency of the FIR no.9 dated 29.06.2004, when admittedly no challan had been presented on the date the petitioners retired.*

11. Once this Court has held that the respondent authorities had no right to withhold the gratuity payable to the petitioners, it necessarily follows that the petitioners are entitled to interest for the delay in payment.

12. The Coordinate Bench of this Court in CWP-15867-2001 titled as "J.S. Cheema vs. State of Haryana and others" decided on 20.11.2013 had held that the jurisprudential basis for grant of interest to a person was that the said person's money had been used by somebody else and thus, even if there was no negligence on the part of the State, it could not be denied that money which rightly belonged to the employee, was in the custody of the State and was being used by it and thus, interest was granted to the petitioner therein on the delayed payment of retiral benefits. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"1 to 3. xxx xxx*
>
> *4. In the written statement, the plea taken is that the petitioner submitted his pension papers very late and that is why some delay was caused in the disbursal of his retiral benefits.*
>
> *5. In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is laying it may result in higher rate because then it can also include the component of damages*

(in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which rightly belonged to the petitioner was in the custody of the State and was being used by it.

6. Learned Assistant Advocate General has further argued that some reasonable time has to be granted for processing the papers and the requirement of law is not that strict that interest must be ordered from the first day after retirement. I find some weight in this assertion.

7. Learned counsel for the petitioner has argued that as per the Government instructions the period of three months has to be taken as maximum period within which the retiral benefits has to be released. After deducting those three months there is still a delay as mentioned above.

8. In the circumstances, I hold the petitioner entitled to interest @ 8% p.a. on the delayed payment of retiral benefits. The interest will become due w.e.f. 01.05.2000. Let the interest on the above components i.e. gratuity, arrears of pension and leave encashment be computed @ 8% p.a. from 01.05.2000 till the date of payment and the same be released to the petitioner within a period of two months from the date of receipt of a certified copy of this order, failing which, the petitioner would be entitled to claim the same with interest @ 9% p.a.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of."

13. Keeping in view the abovesaid facts and circumstances, all the six writ petitions are partly allowed *and the petitioners are held entitled to interest @ 6% per annum as granted in the case of Baljit Singh (supra) on the delayed payment of gratuity and the said interest would accrue to the petitioners after three months from their date of retirement(s) till the date of actual payment. The respondent authorities are directed to release the amount to the petitioners on account of the said interest within a period of three months from the date of receipt of certified copy of the present order."*

7. In view of the above, the present petition is allowed. Respondent No.3 – Executive Officer, Nagar Council, Dera Baba Nanak, is directed to grant interest @ 6% per annum on the payment of gratuity amount of the petitioner w.e.f. 01.03.2013 (two months after his retirement) till the date of the actual payment. Necessary amount be released to the petitioner within a period of three months from the date of receipt of certified copy of this order.

(NAMIT KUMAR)
JUDGE

07.05.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No